

**REMARKS**

Entry of the foregoing, reexamination and reconsideration of the subject application are respectfully requested in light of the amendments above and the comments which follow.

As correctly noted in the Office Action Summary, claims 1-5 and 9-37 were pending. By the present response, claims 2-5, 9-16, 29-30 and 33 have been amended, claim 1 canceled, and claim 38 has been added. Thus, upon entry of the present response, claims 2-5 and 8-38 remain pending (claims 22-28 and 31 having been withdrawn) and await further consideration on the merits.

Support for the foregoing amendments can be found, for example, in at least the following locations in the original disclosure: the specification, page 8, lines 10-11 and page 22, lines 5-6.

***CLAIM REJECTIONS UNDER 35 U.S.C. §103***

Claims 1-5, 9-14, 16, 29, 30, and 32-35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,500,303 to Anderson (hereafter "*Anderson*") in view of WO 97/29150 to Rolle et al. (hereafter "*Rolle et al.*") on the grounds set forth in paragraph 3 of the Official Action. For at least the reasons noted below, this rejection should be withdrawn.

The above rejection is improper because it does not comply with the requirements for a *prima facie* case of obviousness as discussed at MPEP §2143. Specifically, the

proposed combination does not contain each and every element of applicants' independent claim 10.

Claim 10 recites that a multilayer structure for packaging comprises, *inter alia*, an intermediate layer of an expanded polymer and on each side of said expanded polymer layer, a gas barrier layer. The expandable polymer material comprises a first, rigid polymer component and a second, ductile polymer component. A mixing ratio of the first, rigid polymer component to the second, ductile polymer component in the expanded polymer layer is less than 1:1 (e.g., there is more of the second, ductile component than of the first, rigid component).

As shown in Figure 11, *Anderson* discloses a structure with an expanded polymer 110 between plies 20 and 30. The only material explicitly disclosed in *Anderson* for the foamed layer 110 is polystyrene. Thus, *Anderson* discloses an expanded polymer of one material and does not disclose, teach or suggest an expanded polymer material comprising both a first, rigid polymer component and a second, ductile polymer component. Furthermore, *Anderson* does not disclose, teach or suggest the claimed mixing ratio of the first, rigid polymer component and the second, ductile polymer component.

The Examiner relies upon the disclosure in *Rolle et al.*, specifically the disclosure of a high melt-strength polypropylene and the addition of other types of polypropylene (homo- or copolymers). See page 6, lines 2-6.

However, in contrast to applicants' independent claim 10, the high melt-strength polypropylene combined with other types of polypropylene disclosed in *Rolle et al.* does

not have a mixing ratio of the first, rigid polymer component to the second, ductile polymer component less than 1:1. *Rolle et al.* discloses that although it is advantageous to lower the percentage of high melt-strength polypropylene towards 50 percent by adding other types of polypropylene, *Rolle et al.* then goes on to disclose the mixture of thermoformable material containing the high melt- strength polypropylene contains polypropylene foam of 60 to 90 percent, preferably 60 to 80 percent high melt-strength polypropylene. See page 6, lines 12-14. Thus, in contrast to applicants' independent claim, *Rolle et al.* does not disclose lowering the percentage to less than 50 percent.

From the above, applicants respectfully assert that the combination of *Anderson* and *Rolle et al.* does not disclose applicants' independent claim 10. Specifically, applicants claim a packaging structure for packaging wherein a mixing ratio of the first, rigid polymer component to the second, ductile polymer component in the expanded polymer layer is less than 1:1. *Anderson* only discloses one component for his intermediate layer. The disclosure in *Rolle et al.* relied upon by the Examiner discloses a mixture that is greater than 1:1 (indeed, from 6:4 to 9:1). Accordingly, the combination of the disclosures, when read as a whole, does not result in applicants' claim 10 multilayer structure for packaging. Accordingly, the Official Action has not established a *prima facie* case of obviousness and the rejection should be withdrawn.

The Examiner has previously argued that the mixing ratios in applicants' claims are inherent in the references. However, applicants respectfully assert that in view of the specific teachings of the *Rolle et al.* reference contained at page 6, lines 12-14, it would be

improper to apply an inherency argument to the claimed mixing ratios while asserting the combination of references in the present rejection.

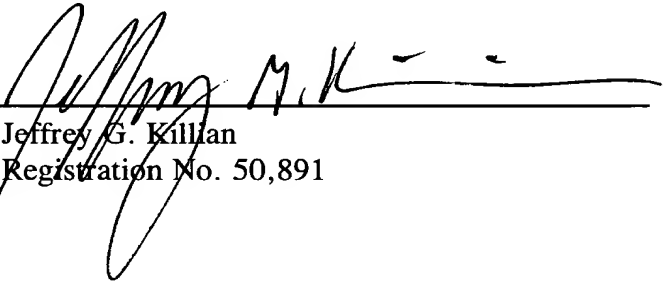
The remaining rejections based on the combination of *Anderson* in view of *Rolle et al.* and in further view of U.S. Patent No. 5,093,164 to Bauer et al. (hereafter "*Bauer et al.*") and/or U.S. Patent No. 5,527,622 to Kato et al. (hereafter "*Kato et al.*") have been obviated by applicants' amendment in which claim 10 is the new independent claim. Claim 10 had previously not been rejected by these combinations of references. Accordingly, the withdrawal of these rejections is respectfully requested.

**CONCLUSION**

From the foregoing, further and favorable action in the form of a Notice of Allowance is earnestly solicited. Should the Examiner feel that any issues remain, it is requested that the undersigned be contacted so that any such issues may be adequately addressed and prosecution of the instant application expedited.

Respectfully submitted,

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